

# EXHIBIT A

From: [Jim Franklin](#)  
To: [Ben Feist](#)  
Subject: RE: ICE detainees  
Date: Thursday, January 8, 2015 10:39:36 AM  
Attachments: [FW ICE Detainers \(29.3 KB\).msg](#)  
[Hennepin County Sheriff's Office Announcement on ICE Detainers \(912 KB\).msg](#)

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Ben

Will try it again.....

Let me know if you got this one?

**James Franklin**  
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**From:** Jim Franklin  
**Sent:** Wednesday, January 07, 2015 4:13 PM  
**To:** 'Benjamin Feist'  
**Subject:** ICE detainees

Ben:

This is a copy of the Mike Freeman memo/announcement with Stanek on the issue of ICE holds. We sent this out to all Sheriffs and I think Joh Kingrey sent this out to all County attorneys also. Other than a few short communications with Sheriffs this about all of the communications we have sent out on this issue.FYI.....

**James Franklin**  
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From: [John Kingrey](#)  
To: [Jim Franklin](#)  
Subject: FW: ICE Detainers  
Date: Wednesday, June 11, 2014 10:56:09 AM  
Attachments: [ICE Detainers Memorandum-DPR.pdf](#)

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Jim – here you go. You might want to see if Rich has anything in addition to this. John.

**Subject:** ICE Detainers

Colleagues, Today Hennepin County Sheriff Richard Stanek declared that his office will no longer hold in the Hennepin County Jail individuals after their state proceedings had been concluded on the basis of an ICE immigrant detainer hold. This previous practice of holding detainees up to 48 hours based on the conclusion of an ICE agent that the individual was a person believed to be subject to removal for the United States had been based on Federal Law and regulations which ICE lawyers had argued was mandatory on local law enforcement.

This issue has recently been litigate several times and several Federal Courts have ruled that these ICE detainer requests are voluntary on local officials and not mandatory. Even ICE lawyers have backed down from their previous positions and now have acknowledged to us that these requests are just that, requests and are voluntary and no longer mandatory.

At the most recent MCAA Board meeting this topic was discussed and I volunteered to share with Members the fruits of our research and legal conclusion. A short version of that work is attached. We have a more complete version of our opinion as well.

A number of other jurisdictions have arrived at this same legal and policy conclusions such as New York, Washington D.C. Miami, and ,most recently, San Diego. If we can be of further assistance please let me know.

Mike Freeman

\*\*\*\*\*

**Michael O. Freeman**

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**HENNEPIN COUNTY ATTORNEY'S OFFICE**  
**Civil Division**  
**M E M O R A N D U M**

**TO: Michael O. Freeman, Hennepin County Attorney**

**FROM: Jim Keeler, Assistant Hennepin County Attorney**

**RE: ICE Detainers**

**DATE: June 11, 2014**

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In response to a change in interpretation of a federal regulation and several federal court decisions, a growing number of state and local governments are refusing to honor U.S. Immigration and Customs Enforcement (ICE) detainers. These recent and significant legal developments require a reevaluation of past legal advice and current HCSO policy regarding honoring ICE detainers.

**ICE Detainers**

An Immigration Detainer – Notice of Action or DHS Form I-247 (“ICE Detainer”) is a request to a state or local law enforcement agency (LEA) to maintain custody of an individual for a period not to exceed 48 hours (excluding Saturdays, Sundays and federal holidays) after such individual would otherwise be released to give ICE time to assume custody on the individual for further investigation. The governing authority for ICE detainers appears in 8 CFR §287.7 (the “Regulation”) and reads in relevant part as follows:

- (a) *Detainers in general:* Detainers are issued pursuant to sections 236 and 287 of the Act and this chapter 1. Any authorized immigration officer may at any time issue a Form 1-247 Immigration Detainer – Notice of Action, to any other Federal, State or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to the release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.

\* \* \* \*

- (d) *Temporary detention at Department request.* Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency **shall** maintain custody of the alien for a period not to exceed 48

hours, excluding Saturdays, Sundays and holidays in order to permit assumption of custody by the Department.

(emphasis added). ICE issues detainers in cases where it has reason to believe that a person may be subject to removal from the United States. ICE detainers arose out of a federal information-sharing partnership between ICE and the FBI. When a person is arrested and booked into the system, the local law enforcement agency (“LEA”) shares the arrested person’s fingerprints with the FBI to see if the person has a criminal record. The FBI automatically shares these fingerprints with ICE to check against its immigration databases. In addition, pursuant to the Criminal Alien Program (CAP) ICE agents interrogate foreign-born inmates in local jails. Based on the information ICE is able to collect, if ICE believes a person could be deported, the agency issues a detainer to facilitate their arrest.

Based on what appears to be the mandatory language of 8 CFR §287.7(d) (“shall maintain custody”) and ICE’s previous construction of this statute, the HCSO’s policy to date has been to honor ICE detainers and detain individuals for up to an additional 48 hours after other state or federal holds on the individuals have terminated.

### **The Changed Landscape**

Over the past several months, the legal landscape has changed dramatically. First, several court decisions have held that that what appears to be a mandatory requirement to hold individuals subject to an ICE detainer in 8 CFR §287.7(d) is not mandatory, but rather merely a request to a local agency. *See, e.g. Galarza v. Szalczyk*, 745 F.3d 634 (3<sup>rd</sup> Cir. 2014); *Morales v. Chadbourne*, 2014 WL 554478 (D. RI 2014); *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305 \*1 (D. Or., April 11, 2014).

Second, ICE has changed its interpretation of 8 CFR 287.7. In a February 25, 2014 letter to Representative Keith Ellison (D-MN5), the Acting Director of ICE clarified that immigration detainers are not mandatory “as a matter of law.” ICE confirmed this construction. In a May 22, 2014 voice mail message, local ICE Chief Legal Counsel Jennifer Longmeyer-Wood said that the detainer form is in fact a “request” and Hennepin County may choose how to respond to that “request.” This is a significant change from ICE’s previous communications to the HCAO regarding these detainers.

### **HCAO Recommendation**

There is no controlling precedent in the Eight Circuit. However, the recent federal court rulings and change in ICE policy lead to only one logical conclusion: ICE detainers are requests rather than mandatory orders. In other words, an ICE detainer or DHS Form I-247 without more is not legally sufficient to hold an individual in custody. ICE detainers alleging that DHS has merely “determined there is reason to believe the individual is an alien subject to removal . . .” should no longer be relied upon by the HCSO to hold an individual in custody.

From: [Rich Stanek](#)  
To: [Jim Franklin](#)  
Subject: Hennepin County Sheriff's Office Announcement on ICE Detainers  
Date: Wednesday, June 11, 2014 11:22:34 AM  
Attachments: [06.11.2014 Sheriff Stanek Statment on ICE detainees.doc](#)

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Jim,

As we discussed, please forward the below to MN Sheriffs. Thank you.

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Fellow Minnesota Sheriffs,

This morning, Hennepin County Attorney Mike Freeman and I announced that as of midnight tonight, the Hennepin County Jail will no longer honor US Immigration and Customs Enforcement detainees, absent judicial authority.

Recent directives by Immigrations & Customs Enforcement that detainees are now considered discretionary along with subsequent Federal Court decisions articulating the same, are strong indicators that the legal landscape is changing on this matter.

My decision comes after a long, thoughtful, and deliberate process and upon advice from our County Attorney and others.

Attached is the official statement we released that includes additional information and background.

Please feel free to call me if you have any questions. Thank you.

Sheriff Rich Stanek  
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# HENNEPIN COUNTY SHERIFF'S OFFICE

## News Release



Media Contact:  
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(612) 919-5918

### **Sheriff Stanek Statement on U.S. Immigration and Customs Detainers**

**June 11, 2014 (MINNEAPOLIS)** – Hennepin County Sheriff Rich Stanek has issued the following statement:

Effective Thursday, June 12, the Hennepin County Sheriff's Office will no longer honor U.S. Immigration and Customs Enforcement detainers absent judicial authority.

The Hennepin County Sheriff's Office receives approximately 36,000 inmates each year. Of those 36,000 inmates, approximately 1.5 percent have a detainer placed on them by U.S. Immigration and Customs Enforcement. U.S. Immigration and Customs Enforcement detainers is a request for local jails to hold individuals up to 48 hours after their local charges have been satisfied.

Historically, U.S. Immigration and Customs Enforcement detainers were interpreted as "mandatory," requiring jails to honor them. However, recent directives by U.S. Immigration and Customs Enforcement that detainers are discretionary and subsequent Federal Court decisions articulating the same, are strong indicators that the legal landscape is changing. Therefore the Hennepin County Sheriff's Office will no longer honor U.S. Immigration and Customs Enforcement detainers absent judicial authority.

My decision comes after a long, thoughtful, and deliberate process that included meetings and discussions with Hennepin County Attorney Mike Freeman, residents across Hennepin County, local and national elected officials, the Sheriff's Office Community Advisory Board, the American Civil Liberties Union (ACLU), and representatives from the many diverse communities of Hennepin County.

My first responsibility as Sheriff of Hennepin County will always be to enforce the law and abide by the Constitution.

Rich Stanek  
Hennepin County Sheriff

For further information, please contact PIO Jennifer Johnson at 612-919-5918 or [jennifer.a.johnson@hennepin.us](mailto:jennifer.a.johnson@hennepin.us)

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